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REMARKS

Applicants respectfully present Claims 21-37 and 39-41 for examination in the RCE filed herewith. Claim 38 was previously canceled and Claims 21, 28, 29, 30 and 33 have been amended herein to more clearly define the scope of the presently claimed invention. No new claims have been submitted. Applicants respectfully submit that the claims and remarks presented herein overcome the Examiner's rejections in the Final Office Action dated September 9, 2005 in the parent and are now in condition for appeal or allowance.

Double patenting

Once again, the Examiner rejected Claims 21-41 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 10-18 of U.S. Patent No. 6,138,273. The Examiner suggests that although the conflicting claims are not identical, they are not patentably distinct from each other. Again, without conceding the appropriateness of the rejection, Applicant reiterates that Applicant is agreeable to filing a terminal disclaimer as suggested by the Examiner in order to address this rejection, upon indication by the Examiner that at least one claim in the present case would be otherwise allowed.

35 U.S.C. §102

Claims 21-22, 26, 28, 32-39 and 41 stand rejected under 35 U.S.C. § 102(b) as anticipated by Hara (U.S. Patent No. 4,719,564). The Examiner submits that Hara discloses all the elements of these claims. Applicant respectfully traverses the rejection.

Hara describes an interpreter linkage system for linking extension interpreters to a basic interpreter (Hara, Title). The Examiner points to Fig. 5 and the associated text in Hara to support the position that Hara teaches each and every element of Claims 21-22, 26, 28, 32-39 and 41. As a preliminary matter, Applicant respectfully submits that the rejection of Claims 21-22, 26, 28, 32-39 and 41 is facially deficient because the Examiner has not established a *prima facie* case of anticipation. As is well-established, in order to establish a *prima facie* case of anticipation under 35 U.S.C. § 102, the cited prior art must

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teach or suggest every limitation of the claims being rejected. Therefore, if even one claim element or limitation is not taught or suggested by the combination of references, a *prima facie* case is not established. Additionally, as the Federal Circuit has noted,

“As adapted to *ex parte* procedure, *Graham* [v. John Deere Co.] is interpreted as continuing to place the *burden of proof on the Patent Office* which requires it to produce the factual basis for its rejection of an application under sections 102 and 103.”

In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967)) (emphasis added). The Examiner thus has the burden of producing a factual basis for his rejection and for establishing anticipation by identifying how each recited claim element is allegedly disclosed by the cited reference(s). In the present case, the Examiner simply points to “Fig. 5 and associated text” to support the contention that Hara teaches each and every element of the claimed invention. Applicant respectfully submits that this statement is insufficient and that the Examiner has failed to establish a *prima facie* case. Instead, the Examiner has merely provided bare allegations that the reference renders the claims anticipated by Hara. The rejection of Claims 21-22, 26, 28, 32-39 and 41 should therefore be reversed for at least this reason.

The lack of a *prima facie* case notwithstanding, Applicant nonetheless respectfully submits that Hara simply does not disclose the elements of Claims 21-22, 26, 28, 32-39 and 41. Since the Examiner has not put forth an argument to show how Hara discloses each and every one of the claim elements, Applicant is unable to respond to any of the Examiner’s concerns. Applicant is thus forced to rely on Applicant’s own reading of Hara and Applicant fails to see how Hara discloses the claimed elements of receiving a literal source code macroinstruction, encoding the literal source code macroinstruction into a corresponding subroutine address without an intermediate translation, generating an execution stream, and storing the subroutine address. More specifically, Applicant respectfully contends that Hara does NOT teach at least some of these claimed elements (e.g., at least the elements of encoding the literal source code macroinstruction into a corresponding subroutine address without an intermediate translation, generating an execution stream, and storing the subroutine address). Applicant therefore respectfully

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submits that Hara does not anticipate Claims 21-22, 26, 28, 32-39 and 41 and requests the Examiner to withdraw the rejection to these claims under 35 U.S.C. §102.

35 U.S.C. §103

Claims 23-25, 29-31 and 40 stand rejected under 35 U.S.C. §103 as being unpatentable over the combination of Hara in view of Aho ("Compilers, Principles, Techniques and Tools"). Additionally, Claim 27 stands rejected under 35 U.S.C. §103 as being unpatentable over Hara. Applicant respectfully traverses the Examiner's rejection.

Applicant respectfully submits that Hara, alone or in combination with Aho, does not render Claims 23-25, 27, 29-31 and 40 unpatentable. Claims 23-25, 27, 29-31 and 40 are dependant on Claims 21, 28, 33 and 36 and include all features of these independent claims. As previously described, Hara does not disclose all the elements of the independent claims. Combining Aho with Hara also does not teach or suggest this element. The Examiner highlights Page 65 of Aho as teaching the elements of pushing an argument on a stack, popping an argument from a stack and/or pushing a result onto a stack. Applicant respectfully submits that this is irrelevant to the present discussion. Applicant is not claiming the concepts of pushing an argument on a stack, popping an argument from a stack and/or pushing a result onto a stack in the abstract. Rather, Applicant is claiming these elements as part of a scheme of interpreting code without performing intermediate translations. Applicant thus submits that Hara and/or Aho, alone or in combination, do not, and in fact cannot, render Claims 23-25, 29-31 and 40 unpatentable and respectfully requests the Examiner to withdraw the rejection to these claims under 35 U.S.C. §103.

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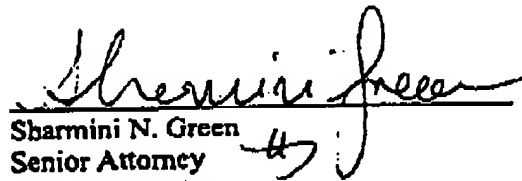
CONCLUSION

Based on the foregoing, Applicant respectfully submits that the applicable objections and rejections have been overcome and that pending Claims 21-37 and 39-41 are in condition for allowance. Applicant therefore respectfully requests an early issuance of a Notice of Allowance in this case. If the Examiner has any questions, the Examiner is invited to contact the undersigned at (714) 669-1261.

If there are any additional charges, please charge Deposit Account No. 50-0221.

Respectfully submitted,

Dated: January 6, 2006


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